

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 10, 2014 appellant, then a 61-year-old electroplater, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2014 he strained his lower back when lifting a C-130 propeller barrel. He stopped work on January 27, 2014 and returned to restricted work on January 28, 2014. OWCP accepted the claim for lumbar strain.²

Appellant received treatment from an employing establishment clinic after his injury. In a March 20, 2014 report, Dr. Anna Abrigo, a pediatrician, and Dr. Michael G. Rappa, an internist, both employing establishment physicians, reviewed his workers' compensation claim. The physicians noted that appellant had a prior history of low back pain as based on a December 2012 computerized tomography (CT) scan showing disc protrusions at L4-5 and L5-S1 and severe canal narrowing due to facet hypertrophy. Dr. Abrigo and Dr. Rappa reviewed an October 28, 2013 medical report diagnosing degenerative disc disease, facet arthropathy at L4-5 and L5-S1, disc protrusions and stenosis particularly at L4-5, osteoarthritis of the sacroiliac joints, bilateral hamstring tightness, and myofascial pain syndrome. The physicians related:

“[Appellant] has an underlying back pain which is actively being treated by the [Veterans Administration] with a history of significant spinal stenosis. Understandably, [he] would have experienced low back pain with moving of the barrel and it could have exacerbated or brought out his symptoms more. Merely lifting the barrel did not cause or aggravate [the] condition for which he is now experiencing pain.”

An April 25, 2014 CT scan showed degenerative disc disease and facet changes similar to that in a previous study and grade 1 anterolisthesis at L3-4.

On May 13, 2014 Dr. K. Scott Malone, a Board-certified physiatrist, noted that he had experienced low back pain for around five months after a January 2014 injury at work lifting a part. In a progress report dated June 3, 2014, he obtained a history of appellant sustaining an injury on January 27, 2014 causing back pain radiating into the left lower extremity after he lifted a barrel at work. Dr. Malone advised that he “consider[ed] the reported injury to be the cause of the injured workers' problem.” In progress reports dated May 13 to October 22, 2014, he treated appellant for lumbar strain/sprain.

A November 13, 2014 CT scan revealed advanced degenerative disc disease superimposed on a congenitally narrow canal, severe L3-4 and L4-5 spinal stenosis, mild stenosis at L2-3, and multilevel lateral recess and foraminal narrowing.

Dr. Malone, on November 18, 2014, requested that OWCP update the injury-related diagnosis to include chronic degenerative lumbar disc disease. In an accompanying progress report, he discussed appellant's symptoms of low back pain and diagnosed lumbar sprain and lumbar degenerative disc disease.

² In a March 25, 2014 decision, OWCP denied appellant's traumatic injury claim as the medical evidence was insufficient to show causally relationship. In a decision dated May 13, 2014, it vacated the March 25, 2014 decision and accepted the claim for lumbar strain.

On November 19, 2014 Dr. Daxes M. Banit, a Board-certified orthopedic surgeon, saw appellant for back pain radiating to the left leg for the past 11 months after bending to pick up a part at work in January 2014. He advised that the injury was “work related.” Dr. Banit diagnosed lumbar degenerative disc disease, lumbar spondylosis with myelopathy, lumbar stenosis, neuritis/radiculopathy, lumbar spondylosis without myelopathy, and foraminal stenosis. On December 3, 2014 he diagnosed lumbar sprain and lumbar degenerative disc disease. Dr. Banit indicated that the date of injury was January 27, 2014 and found “the reported injury to be the cause of the injured worker’s problem.” On December 4, 2014 he requested authorization for lumbar spinal injections.

On January 8, 2015 Dr. Malone requested that OWCP update the accepted conditions to include chronic lumbar degenerative disc disease, lumbar spondylosis with myelopathy, lumbar stenosis, neuritis/radiculopathy, and spondylosis of the lumbar spine without myelopathy.

By letter dated January 8, 2015, OWCP advised appellant that it could not authorize the requested treatment as it did not appear to be due to his January 27, 2014 work injury. It requested that he submit a reasoned report from his attending physician addressing why he believed the claimed condition was caused or aggravated by the employment injury.

In a report dated January 29, 2015, Dr. Banit discussed appellant’s complaints of back pain affecting his activities of daily living. He provided examination findings of a positive straight leg raise. Dr. Banit diagnosed neuritis/radiculopathy, lumbar degenerative disc disease, and lumbar spondylosis without myelopathy.

By decision dated March 3, 2015, OWCP denied appellant’s request to expand acceptance of his claim to include the additional conditions of chronic lumbar degenerative disc disease, lumbar spondylosis with and without myelopathy, lumbar stenosis, and neuritis/radiculopathy. It found that he had not submitted a report from a physician explaining how the diagnosed conditions were causally related to the accepted January 27, 2014 work injury.

In a report dated March 3, 2015, received by OWCP on March 11, 2015, Dr. Banit discussed his treatment of appellant for an employment injury on January 27, 2014 after he lifted a C-130 airplane barrel. He noted that his symptoms worsened with time and that he could not get authorization for treatment. Dr. Banit requested expansion of appellant’s claim to include the additional requested conditions.³

Dr. Banit, on March 16, 2015, noted that OWCP denied expansion of the additional conditions as they were preexisting. He related:

“[I]t is my professional medical opinion that [appellant] was able to work without restrictions up until the date he injured his back lifting a C-130 propeller barrel. With that said, if these conditions are considered to be preexisting, they were certainly aggravated by this incident, within a reasonable degree of medical certainty.”

³ Dr. Banit continued to provide progress reports describing his treatment of appellant.

On April 30, 2015 appellant requested reconsideration.⁴ He maintained that his physician found that his claim should be expanded.

By decision dated July 31, 2015, OWCP denied modification of the March 3, 2015 decision. It found that Dr. Banit's opinion was insufficiently rationalized to establish that lifting on January 27, 2014 caused or aggravated by diagnosed conditions.

In a progress report dated August 13, 2015, Dr. Banit noted that appellant's symptoms had not changed and that OWCP had not expanded acceptance of his conditions.⁵ He diagnosed lumbar degenerative disc disease, lumbar spondylosis without myelopathy, and thoracic/lumbar neuritis and radiculitis. Dr. Banit again requested that OWCP update its acceptance to include additional conditions.

In a September 8, 2015 report, Dr. George S. Stefanis, a Board-certified neurosurgeon, related that appellant had low back pain radiating into the legs after lifting parts at work on January 27, 2014. He reviewed the results of objective studies showing retrolisthesis at L4-5, anterior listhesis at L3-4, and degenerative disc disease at L4-5 and L5-S1.⁶ On September 22, 2015 Dr. Stefanis requested that OWCP update the accepted conditions to include herniated discs at L4-5 and L5-S1, lumbar spinal stenosis at L4-5 and L5-S1, lumbar spondylolisthesis at L3-4, and lumbar degenerative disc disease from L3 to S1. In an accompanying chart note, he advised that a September 17, 2015 myelogram showed L4-5 and L5-S1 disc herniations. Dr. Stefanis recommended surgery and work restrictions.

Dr. Stefanis, on October 3, 2015, noted that appellant provided a history of a lifting injury at work on January 27, 2014. He related, "At that time, he developed pain in his back radiating into the back and the legs down into the hips and into the thighs." Dr. Stefanis advised that objective testing showed impingement of the L4-5 and L5-S1 nerve roots bilaterally, or "pressure on the nerve roots on both sides with physical pressure as well as swelling of the nerves that can cause pain in the back, hip, and legs." He noted that appellant also had instability at L3-4 and anticipated that he would require surgery.

Appellant, on October 14, 2015, requested reconsideration. In a chart note dated October 20, 2015, Dr. Stefanis recommended a spinal fusion. He found that appellant could continue working modified duty. In an attached November 2, 2015 cover letter, Dr. Stefanis requested that OWCP expand acceptance of the claim to include additional conditions.

⁴ In a statement dated April 27, 2015, appellant described the January 27, 2015 work incident.

⁵ Dr. Banit and Dr. Malone continued to provide progress reports. In an August 18, 2015 report, Dr. Malone provided examination findings and diagnosed chronic lumbar disc degeneration and lumbar sprain/strain. He noted that OWCP had not authorized epidural injections and that a "causation statement was provided in his initial note on December 3, 2014."

⁶ In a progress report dated September 10, 2015, Dr. Banit diagnosed lumbar degenerative disc disease, lumbar spondylosis without myelopathy, and neuritis/radiculitis of the thoracic and lumbar spine.

By decision dated January 12, 2016, OWCP denied modification of the July 31, 2015 decision. It found that Dr. Stefanis did not provide rationale for his opinion that the current conditions resulted from the January 27, 2014 work injury.

Dr. Stefanis submitted chart notes dated March and April 2016. On March 9, 2016 he noted that OWCP accepted only that appellant sustained a lumbar sprain. Dr. Stefanis opined that the results of the September 17, 2015 myelogram were “totally different than a lumbar strain.” He indicated that appellant had not been evaluated by a neurosurgeon at the time of the diagnosis. Dr. Stefanis found that based on the history of injury and the results of the myelogram, appellant had “a very significant problem causing nerve root compression.”

On April 12, 2016 Dr. Stefanis noted seeking approval for surgery from OWCP. He discussed appellant’s history of a January 27, 2014 work injury and his radiating pain symptoms since that time. Dr. Stefanis noted that physicians originally diagnosed a lumbar strain but that a September 17, 2015 myelogram showed a significant disc herniation at L5-S1 and nerve root problems at L4-5 and L5-S1. He related, “I feel that the disc herniation was caused by the incident [appellant] described to me. [Appellant] does have degenerative changes, but [he] was working and continues to work even though it is light duty, but he is having pain radiating into both hips and both legs.” Dr. Stefanis opined, “My feeling is that he does have a disc herniation extend[ing] into the left neural foramen at L4-5 as well as a large central herniation at L5-S1. There are degenerative changes, but these [he] was working with before the injury occurred. I feel that his symptoms are due to the injury that he described to me.”

In an April 13, 2016 report, Dr. Stefanis advised that appellant had degenerative disc disease before his work injury but it “did not inhibit his ability to perform his full time, regular-duty work activities which required him lifting 75 [pound] aircraft parts.” He further did not have radiculopathy prior to lifting the aircraft part on January 27, 2014. Dr. Stefanis related that appellant’s accepted conditions should be expanded to include a herniated disc at L4-5 and L5-S1, spinal stenosis at L4-5 and L5-S1, spondylolisthesis at L3-4, and degenerative disc disease at L3-4, L4-5, and L5-S1. He advised that a sprain would have long since resolved.

On April 18, 2016 appellant requested reconsideration.⁷

In a decision dated June 21, 2016, OWCP denied modification of its January 12, 2016 decision. It found that the medical evidence did not contain a rationalized opinion that the work incident resulted in the diagnosed conditions.

Dr. Stefanis, in an August 9, 2016 report, indicated that a 2015 myelography showed L4-5 and L5-S1 disc problems. He related that based on appellant’s history and the myelogram appellant had experienced “an aggravation of his preexisting problem.”⁸ Dr. Stefanis advised that appellant could work light duty and would at some point require surgery.

⁷ In chart notes dated May 3 and June 7, 2016, Dr. Stefanis provided physical findings and opined that appellant could work with restrictions.

⁸ Dr. Stefanis also provided a chart note dated July 29, 2016.

On August 18, 2016 appellant requested reconsideration. By decision dated August 30, 2016, OWCP denied modification of its June 21, 2016 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹²

OWCP's procedures provide:

"In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the pre-existing condition. Such evidence will permit the proper kind of acceptance (*e.g.*, temporary vs. permanent aggravation)."¹³

ANALYSIS

OWCP accepted that appellant sustained lumbar strain due to a January 27, 2014 employment injury. Appellant returned to modified duty following his injury. He requested that OWCP accept additional back conditions as work related. The Board finds, however, that appellant did not submit sufficient reasoned medical evidence on causal relationship to establish additional employment-related conditions.

Appellant received treatment from physicians at the employing establishment from January to April 2014. A CT scan obtained April 25, 2014 revealed degenerative disc disease and facet changes similar to that in a previous study and grade 1 anterolisthesis at L3-4. In a

⁹ See *V.B.*, Docket No. 12-599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹¹ See *John W. Montoya*, 54 ECAB 306 (2003).

¹² See *H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Casual Relationship*, Chapter 2.805.3(e) (January 2013).

report dated October 28, 2014, Dr. Abrigo and Dr. Rappa discussed appellant's history of preexisting low back pain and CT scan findings from 2012 of L4-5 and L5-S1 disc protrusions and facet hypertrophy. The physicians found that appellant's January 27, 2014 injury could have increased his symptoms but did not cause or aggravate his current condition.

Dr. Malone began treating appellant in May 2014 for lumbar strain/sprain. He obtained a November 13, 2014 CT scan showing advanced degenerative disc disease superimposed on a congenitally narrow canal, severe L3-4 and L4-5 spinal stenosis, mild stenosis at L2-3, and multilevel lateral recess and foraminal narrowing. Dr. Malone provided a history of appellant's January 2014 work injury. On November 18, 2014 he requested that OWCP expand acceptance of appellant's claim to include chronic lumbar degenerative disc disease. On January 8, 2015 Dr. Malone recommended that OWCP accept chronic lumbar degenerative disc disease, lumbar spondylosis with and without myelopathy, lumbar stenosis, and neuritis/radiculopathy as employment-related conditions. However, he did not provide any rationale supporting his conclusion that the additional conditions were due to the accepted work injury. Medical conclusions unsupported by rationale are of diminished probative value.¹⁴

Dr. Banit, on November 19, 2014, discussed appellant's complaints of radiating back pain after picking up a part at work in January 2014. He indicated that the injury was related to his work. Dr. Banit diagnosed lumbar degenerative disc disease, lumbar spondylosis with myelopathy, lumbar stenosis, neuritis/radiculopathy, lumbar spondylosis without myelopathy, and foraminal stenosis. On December 3, 2014 he diagnosed lumbar sprain and degenerative disc disease and advised that appellant's January 27, 2014 injury caused his problem. In a March 3, 2015 progress report, Dr. Banit noted that appellant sustained a work injury on January 27, 2014 lifting a barrel for a C-130 airplane and requested claim expansion to include the previously requested conditions. He did not, however, support his causation finding with medical rationale explaining how the January 27, 2014 work incident caused or aggravated the diagnosed conditions.¹⁵ Such rationale is particularly important given appellant's history of preexisting back conditions.¹⁶

On March 16, 2015 Dr. Banit reviewed OWCP's denial of the expansion of appellant's claim to include additional conditions. He noted that he had worked without any restrictions until lifting the C-130 propeller barrel and advised that the lifting injury aggravated his preexisting back condition. In a progress report dated August 13, 2015, Dr. Banit again requested that OWCP update its acceptance to include lumbar degenerative disc disease, lumbar spondylosis without myelopathy, and thoracic/lumbar neuritis and radiculitis. However, he did not explain how the lifting injury caused an aggravation of appellant's underlying back condition. The Board notes that, with respect to an opinion on aggravation or exacerbation, the opinion must differentiate between the effects of the work-related injury and the preexisting

¹⁴ See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁵ See *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁶ See *P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

condition.¹⁷ Dr. Banit did not explain how the lifting incident affected an underlying condition and thus his report is insufficient to meet appellant's burden of proof.

Dr. Stefanis, on September 8, 2015, discussed appellant's complaints of low back pain radiating into his legs after lifting parts on January 27, 2014 at work. He noted that diagnostic studies showed L4-5 retrolisthesis, L3-4 anterior listhesis, and L4-5 and L5-S1 degenerative disc disease. On September 22, 2015 Dr. Stefanis requested that OWCP expand acceptance of appellant's claim to include herniated discs at L4-5 and L5-S1, lumbar spinal stenosis at L4-5 and L5-S1, lumbar spondylolisthesis at L3-4, and lumbar degenerative disc disease from L3 to S1. He provided additional reports on October 3 and 20, 2015 describing the findings on objective studies and requesting claim explanation. On March 9, 2016 Dr. Stefanis advised that the results of the September 2015 myelogram were different than the accepted lumbar sprain condition. He found that the injury and objective testing showed a back problem with nerve root compression. Dr. Stefanis did not, however, provide any rationale for his causation finding or explain how any additional conditions resulted from the January 2014 lifting incident. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.¹⁸ Again, as noted, such rationale is particularly necessary given the history of preexisting back conditions.¹⁹

Dr. Stefanis, in a report dated April 12, 2016, indicated that while physicians originally diagnosed appellant's condition as lumbar sprain, testing showed a disc herniation. He attributed the L5-S1 disc herniation and nerve root problems at L4-5 and L5-S1 to the work injury, noting that while he had preexisting degenerative changes he was able to perform his usual employment prior to the injury. On April 13, 2016 Dr. Stefanis again noted that appellant's preexisting degenerative disc disease did not prevent him from performing his usual employment prior to his January 27, 2014 lifting incident. He further advised that he did not have radiculopathy before that date and requested claim expansion. A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.²⁰ Dr. Stefanis did not explain, with reference to the specific mechanism of injury, how lifting on January 27, 2014 aggravated a preexisting condition and thus his report is of little probative value.²¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁷ See *supra* note 13; see also *J.R.*, Docket No. 16-0327 (issued July 6, 2016).

¹⁸ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁹ See *supra* note 16.

²⁰ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

²¹ The Board notes that other medical reports, including Dr. Stefanis' August 9, 2016 report, are of limited probative value as they did not provide an opinion on causation. See *Jaja K. Asaramo*, *supra* note 9.

CONCLUSION

The Board finds that appellant has not established that his claim should be expanded to include additional back conditions, including chronic degenerative lumbar disc disease, lumbar spondylosis, lumbar stenosis, and neuritis/radiculopathy as causally related to his January 27, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 30 and June 21, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 3, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board